

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 223

July 27, 1999, 7:41 p.m.
Page S-9369 Temp. Record

INTERIOR APPROPRIATIONS/Mill Sites

SUBJECT: Department of the Interior and Related Agencies Appropriations Bill for fiscal year 2000 . . . H.R. 2466.
Stevens motion to table the Murray amendment No. 1360.

ACTION: MOTION TO TABLE AGREED TO, 55-41

SYNOPSIS: H.R. 2466, the Interior Department Appropriations Bill, as amended, will provide \$14.058 billion in new budget authority, which is \$239.9 million less than provided last year and \$1.208 billion less than requested (when the Senate began consideration of the bill it agreed by unanimous consent to substitute the text of the Senate-reported Interior Appropriations bill and to treat that language as original text for the purposes of further amendment).

The Murray amendment would strike lines 1 through 15 on page 122. Those lines will overturn a recently issued opinion by the Solicitor of the Department of Interior on mill sites (waste sites) for mines on Federal lands. That opinion states that the understanding that such sites may be 5 acres or more (that understanding has always prevailed) is wrong. Instead, the Solicitor said that his opinion of the law is that no more than 5 acres per mining claim may be permitted. Mining operations typically must have much more than 5 acres for mill sites to stay in operation.

Debate was limited by unanimous consent. After debate, Senator Stevens moved to table the Murray amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: A Reid/Craig second-degree substitute amendment to the Murray amendment automatically fell when the Murray amendment was tabled. The Reid/Craig amendment would have made the Solicitor's opinion apply only to mining operations for which initial plans of operation were submitted after October 1, 2000. Nothing in the Reid/Craig amendment would be construed as an endorsement or approval of the opinion.

Those favoring the motion to table contended:

The Murray amendment, by protecting an ethically challenged bureaucrat's decision to misread current law in order to restrict

(See other side)

YEAS (55)			NAYS (41)			NOT VOTING (4)	
Republicans (45 or 83%)		Democrats (10 or 24%)	Republicans (9 or 17%)		Democrats (32 or 76%)	Republicans (1)	Democrats (3)
Abraham	Hatch	Bingaman	Collins	Akaka	Kohl	Lott ⁻²	Biden ⁻²
Allard	Helms	Breaux	Fitzgerald	Baucus	Landrieu		Kennedy ⁻²
Ashcroft	Hutchinson	Bryan	Gregg	Bayh	Lautenberg		Moynihan ⁻²
Bennett	Hutchison	Byrd	Jeffords	Boxer	Leahy		
Bond	Inhofe	Conrad	McCain	Cleland	Levin		
Brownback	Kyl	Daschle	Roth	Dodd	Lieberman		
Bunning	Lugar	Hollings	Snowe	Dorgan	Mikulski		
Burns	Mack	Inouye	Specter	Durbin	Murray		
Campbell	McConnell	Lincoln	Voinovich	Edwards	Reed		
Chafee	Murkowski	Reid		Feingold	Robb		
Cochran	Nickles			Feinstein	Rockefeller		
Coverdell	Roberts			Graham	Sarbanes		
Craig	Santorum			Harkin	Schumer		
Crapo	Sessions			Johnson	Torricelli		
DeWine	Shelby			Kerrey	Wellstone		
Domenici	Smith, Bob (I)			Kerry	Wyden		
Enzi	Smith, Gordon						
Frist	Stevens						
Gorton	Thomas						
Gramm	Thompson						
Grams	Thurmond						
Grassley	Warner						
Hagel							

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

hardrock mine mill sites to no more than 5 acres per mine, would stop most mining on Federal lands. Tens of thousands of union, high-paying, blue collar jobs would be lost. Federal and State revenue from taxing mining companies would be lost. Supporters of this amendment have nattered on endlessly about aspects of mining on public lands that have absolutely nothing to do with the amount of land needed for mill sites. In their meandering arguments, they have repeated many of the same blatantly false characterizations of the mining industry that we have been hearing for more than a decade. Though those arguments have nothing to do with this amendment, we cannot allow them to stand unchallenged. Every year that our colleagues make false statements on mining we will refute those statements. Year after year we refuted the loud and rambunctious misrepresentations that were made by the former Senator from Arkansas, who was unrelenting in his opposition to the mining industry, and we will do the same for current opponents of mining if they also prove unwilling to listen to reason and to accept basic facts.

This entire debate has been started by the unethical actions of a single environmental extremist who was given a position of authority by the Clinton/Gore Administration. That extremist, a lawyer by the name of John Leshy, signaled his utter contempt for democracy before he was hired to be Solicitor for the Interior Department. Prior to taking the job, he wrote a book on hardrock mining in which he admitted that there was no genuine crisis in the industry that would prompt a change in current Federal law, and he concluded that therefore "it might even be appropriate for the Interior Department and the courts to consciously reach results that make the statute [on hardrock mining] unworkable." Really? Unelected bureaucrats and judges should consciously destroy laws that offend them? Maybe we missed something in civics class, but we always thought that the legislative branch made laws, the executive branch implemented them, and the judicial branch enforced them.

We are outraged and sickened by this bureaucrat's attitude, though we are hardly surprised considering that he works for Interior Secretary Babbitt. Babbitt, throughout his ignominious tenure, has repeatedly proven his contempt for the legislative process, most recently when he bragged about how he has learned to subvert that process by blackmailing appropriations conference committees into adding last-second legislative language to his liking as the price of gaining the President's signature for funding. In his words: "We've switched the rules of the game. We're not trying to do anything legislative." Instead, he says he just leans on appropriations conference committee members (whom he calls "munchkins") to get them to do his bidding.

Leshy, once he was made Solicitor, followed the unethical advice he had offered in his book by deliberately misreading the section of the Federal hardrock mining law that governs the amount of land that mining companies may have for storing tailings (waste products) from their mining operations. The mining law states that 5 acres per claim will be permitted. According to attorneys in this field, that language was based on the concept of the Comstock Lode, which was the mining activity on which the original, 1872 law was based. From that time forward the legal understanding has been that 5 acres was meant to be the minimum necessary requirement. After more than 130 years, Leshy, an unelected bureaucrat, has decided that it really was meant to be the maximum amount allowed.

Our colleagues meekly demure that decision is a reasonable interpretation of the language. Their argument is nonsensical. Do they mean to suggest that the law to permit and to regulate hardrock mining was supposed to make such mining impossible? As a matter of undeniable fact, we note that modern mines are currently operating with a great deal more than 5 acres for mill sites. If this bureaucrat's decision is allowed to stand, those mines will have to close and no new mines will be able to open. Leshy knew his decision would have this effect. He made this decision deliberately to destroy companies that are operating mines on Federal lands. He made this decision without any concern for the tens of thousands of people who would lose their jobs if he succeeded in his subversion of the law. It was a callous, arrogant, and totally unethical misinterpretation of the law. Our colleagues, with the Murray amendment, are defending that bureaucrat.

Our colleagues, perhaps to justify in their own minds their defense of the indefensible, have trotted out many of the same tired misrepresentations of the hardrock mining industry that we have had to refute year after year. For instance, they have said that mining companies are "sold" land for \$2.50 or \$5 per acre that has billions of dollars worth of gold or other precious metals in it. Of course, they have not mentioned that it costs more than \$200,000 on average, and several years of effort, to prove to the Federal Government that a proposed site has enough precious minerals to justify a patent, they have not mentioned all of the regulatory requirements, including environmental requirements, that have to be met before a mine may be opened, and they certainly have not mentioned that it often takes hundreds of millions of dollars of investment in equipment before digging even begins. If our colleagues really believe that the Government is just giving away billions of dollars of gold for \$5 per acre, we will happily give them each \$5 if they will agree to head out to a public lands State to stake their claims. They may then finally understand that gold is not lying about on the ground but is embedded deep beneath the earth, scattered thinly in millions of tons of rock.

Another tired (and utterly irrelevant) misrepresentation our colleagues have made is that the mining industry is destroying the environment. They have held up pictures of abandoned mine sites that have caused tremendous pollution in order to portray this industry as being environmentally harmful. In response, we note that their pictures are of sites that operated decades ago, before there were any environmental laws, and that current mines operate under a huge maze of environmental laws that are very stringent. For instance, we know of companies that have had to transplant trees that were at their mine sites, and when they later closed those sites they were required to fill in the holes and replant the trees in their original spots. Sometimes, as in any industry, accidents occur, but most mines operate without ever having any environmental problems. Further, we note that modern mines are bonded, so that

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if a mine creates a mess, there is money to clean it up. Certainly it will be very costly to clean up the mess from mines that operated before there were any environmental laws, but that is no reason to prohibit environmentally safe mining today.

Yet another complaint that we have heard is that we are operating under a law that was passed in 1872 that is in urgent need of reform. As in prior years, though, our colleagues seem unwilling to take "yes" for an answer. They say that it is wrong to patent land for \$5 per acre; fine, we are willing to require companies to pay fair market value. That would not make much difference to them or us, considering that such an additional cost would be minuscule compared to the hundreds of millions of dollars typically needed to start a mining operation. We are also willing to have royalty requirements and other similar requirements. We have passed such legislation in the past only to have the people who claim to want to reform mining kill it before it is enacted. It seems like some Senators want an issue more than they want real reform.

There are many environmental extremists in America who oppose any human use of the vast tracts of federally controlled land that exist in a few States, particularly in the West. Some of those anti-people extremists are in the Clinton/Gore Administration; we hope none are in the Senate. We hope that our colleagues will be willing to listen to reason and will agree to fair compromises on this issue. Their offering of this amendment, though, is definitely not a good start.

Those opposing the motion to table contended:

Our colleagues have stated that the current regulations for mill sites on Federal lands do not limit the amount of land that is provided by the taxpayers to mining companies. However, that is just a current and very strained administrative interpretation of the 1872 law, which clearly states that mill sites will be limited to 5 acres. The law does not say that multiple 5 acre sites may be given; it just says 5 acres, period. The current Solicitor of the Interior Department has correctly reinterpreted the law to mean what it obviously was meant to mean, which is that mining companies will be given no more than 5 acres of the taxpayers' land on which to dump their toxic waste.

Those companies dump toxic waste in a supposedly safe manner. However, thousands of abandoned mines are polluting the environment across the United States, particularly in the West. We have shown pictures of the extreme damage that has been caused, but our colleagues are unperturbed. They reply that the damage is from years ago. Much of it is, but not all. Even the most modern mining companies' mill sites have had accidents that have caused huge amounts of damage. Overall, the cost of cleaning up the 100-plus years of pollution may exceed \$70 billion. That amount is an awful lot for an industry that produces just \$4 billion worth of gold each year. Members need to ask themselves if the costs of cleanup, the risks to plants and animals, and the aesthetic damage caused to fragile ecosystems is worth the price of allowing any mining at all.

The major reason we have hardrock mining at all on public lands is that the United States' law on the subject is designed to encourage as much mining activity as possible. In 1872, Congress passed a law to draw people to the West by giving them land to mine at the modest sum of \$2.50 or \$5 per acre. That law has yet to be changed; for pocket change, companies are given control over land that sometimes has billions of dollars worth of precious minerals on it. The States do not have such archaic laws—they charge large sums for their land, and they charge royalties on minerals that are extracted. Private landowners also typically charge royalties for minerals taken from their land. Only the Federal Government gives away land with precious minerals.

The entire process by which mining is permitted on Federal lands needs to be reexamined. The decision by Solicitor Leshy, which we support, has forced us to face the issue. We believe that his decision should stand and that we should seize this opportunity to pass, finally, comprehensive mining law reforms.